

AMENDED IN SENATE MAY 28, 2009
AMENDED IN SENATE APRIL 27, 2009
AMENDED IN SENATE APRIL 14, 2009
AMENDED IN SENATE APRIL 2, 2009

SENATE BILL

No. 774

Introduced by Senator Ashburn

February 27, 2009

An act to ~~add Chapter 3.5 (commencing with Section 16250) to Part 4 of Division 9~~ amend Section 16501 of the Welfare and Institutions Code, relating to children's services.

LEGISLATIVE COUNSEL'S DIGEST

SB 774, as amended, Ashburn. Social workers: criminal history.

Existing law requires the counties, with the assistance of the State Department of Social Services, to provide child welfare services, including emergency response, foster care placement, adoption services, and family maintenance and reunification. *Under existing law, counties may secure from the Department of Justice a criminal record for all county welfare department employees who have frequent and routine contact with children, if the employees provide services to children who are alleged victims of abuse, neglect, or exploitation. If the employee has been convicted of a crime, other than a minor traffic violation, the county welfare director must determine whether there is substantial and convincing evidence to support a reasonable belief that the employee is of good character. Existing law provides specified crimes for which the employee must be suspended from duties involving frequent and routine contact with children.*

~~Commencing January 1, 2010, this~~

This bill would require a county, before hiring an applicant for, or transferring a current employee to, a position as a county child protective service social worker who will be assigned emergency response, family maintenance, family reunification, permanent placement, or adoption responsibilities, with frequent and routine contact with children, if the employee will provide services to children who are alleged victims of abuse, neglect, or exploitation, to secure from the Department of Justice a criminal history record to determine if the applicant person has ever been convicted of specified crimes. The bill would prohibit the county from employing the applicant person under prescribed circumstances. The bill would allow the county to require the applicant person to pay any fees charged by the Department of Justice for the processing of the criminal history and would prohibit the county from hiring a person who had been convicted of specified crimes an additional fee in an amount not more than the amount sufficient to cover the costs to the county of administering the criminal record checks.

This bill would exclude a person who has obtained a certificate of rehabilitation from being considered convicted for purposes of the bill. The bill would specify additional duties of the Department of Justice with respect to obtaining necessary criminal history and subsequent arrest information and responding to counties.

This bill would also permit a county to obtain fingerprints from specified current employees for the purpose of obtaining a criminal record from the Department of Justice. The bill would require the county to terminate or suspend from any duties involving frequent and routine contact with children an employee whose criminal record includes conviction for specified crimes.

Because this bill would require the counties to take additional steps to hire ~~social workers~~ *certain employees*, it would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 *SECTION 1. Section 16501 of the Welfare and Institutions*
2 *Code is amended to read:*

3 16501. (a) As used in this chapter, “child welfare services”
4 means public social services—~~which~~ *that* are directed toward the
5 accomplishment of any or all the following purposes: protecting
6 and promoting the welfare of all children, including handicapped,
7 homeless, dependent, or neglected children; preventing or
8 remediating, or assisting in the solution of problems—~~which~~ *that* may
9 result in, the neglect, abuse, exploitation, or delinquency of
10 children; preventing the unnecessary separation of children from
11 their families by identifying family problems, assisting families
12 in resolving their problems; and preventing breakup of the family
13 where the prevention of child removal is desirable and possible;
14 restoring to their families children who have been removed, by
15 the provision of services to the child and the families; identifying
16 children to be placed in suitable adoptive homes, in cases where
17 restoration to the biological family is not possible or appropriate;
18 and assuring adequate care of children away from their homes, in
19 cases where the child cannot be returned home or cannot be placed
20 for adoption.

21 “Child welfare services” also means services provided on behalf
22 of children alleged to be the victims of child abuse, neglect, or
23 exploitation. The child welfare services provided on behalf of each
24 child represent a continuum of services, including emergency
25 response services, family preservation services, family maintenance
26 services, family reunification services, and permanent placement
27 services. The individual child’s case plan is the guiding principle
28 in the provision of these services. The case plan shall be developed
29 within 30 days of the initial removal of the child or of the in-person
30 response required under subdivision (f) of Section 16501 if the
31 child has not been removed from his or her home, or by the date
32 of the jurisdictional hearing pursuant to Section 356, whichever
33 comes first.

34 (1) Child welfare services may include, but are not limited to,
35 a range of service-funded activities, including case management,
36 counseling, emergency shelter care, emergency in-home caretakers,
37 temporary in-home caretakers, respite care, therapeutic day
38 services, teaching and demonstrating homemakers, parenting

1 training, substance abuse testing, and transportation. These
2 service-funded activities shall be available to children and their
3 families in all phases of the child welfare program in accordance
4 with the child’s case plan and departmental regulations. Funding
5 for services is limited to the amount appropriated in the annual
6 Budget Act and other available county funds.

7 (2) Service-funded activities to be provided may be determined
8 by each county, based upon individual child and family needs as
9 reflected in the service plan.

10 (3) As used in this chapter, “emergency shelter care” means
11 emergency shelter provided to children who have been removed
12 pursuant to Section 300 from their parent or parents or their
13 guardian or guardians. The department may establish, by
14 regulation, the time periods for which emergency shelter care shall
15 be funded. For the purposes of this paragraph, “emergency shelter
16 care” may include ~~“transitional shelter care facilities”~~
17 *facilities* as defined in paragraph (11) of subdivision (a) of Section
18 1502 of the Health and Safety Code.

19 (b) As used in this chapter, “respite care” means temporary care
20 for periods not to exceed 72 hours. This care may be provided to
21 the child’s parents or guardians. This care shall not be limited by
22 regulation to care over 24 hours. These services shall not be
23 provided for the purpose of routine, ongoing child care.

24 (c) The county shall provide child welfare services, as needed,
25 pursuant to an approved service plan, and in accordance with
26 regulations promulgated, in consultation with the counties, by the
27 department. Counties may contract for service-funded activities
28 as defined in paragraph (1) of subdivision (a). Each county shall
29 use available private child welfare resources prior to developing
30 new county-operated resources when the private child welfare
31 resources are of at least equal quality and lesser or equal cost as
32 compared with county-operated resources. Counties shall not
33 contract for needs assessment, client eligibility determination, or
34 any other activity as specified by regulations of the State
35 Department of Social Services, except as specifically authorized
36 in Section 16100.

37 (d) Nothing in this chapter shall be construed to affect duties
38 ~~which~~ *that* are delegated to probation officers pursuant to Sections
39 601 and 654.

1 (e) ~~Any~~—A county may utilize volunteer individuals to
2 supplement professional child welfare services by providing
3 ancillary support services in accordance with regulations adopted
4 by the State Department of Social Services.

5 (f) As used in this chapter, emergency response services consist
6 of a response system providing in-person response, 24 hours a day,
7 seven days a week, to reports of abuse, neglect, or exploitation, as
8 required by Article 2.5 (commencing with Section 11164) of
9 Chapter 2 of Title 1 of Part 4 of the Penal Code, for the purpose
10 of investigation pursuant to Section 11166 of the Penal Code and
11 to determine the necessity for providing initial intake services and
12 crisis intervention to maintain the child safely in his or her own
13 home or to protect the safety of the child. County welfare
14 departments shall respond to ~~any a~~ report of imminent danger to
15 a child immediately and to all other reports within 10 calendar
16 days. An in-person response is not required when the county
17 welfare department, based upon an evaluation of risk, determines
18 that an in-person response is not appropriate. This evaluation
19 includes collateral, contacts, a review of previous referrals, and
20 other relevant information, as indicated.

21 (g) As used in this chapter, ~~family~~ “*family maintenance services*
22 ~~are services~~” means activities designed to provide in-home
23 protective services to prevent or remedy neglect, abuse, or
24 exploitation, for the purposes of preventing separation of children
25 from their families.

26 (h) As used in this chapter, ~~family~~ “*family reunification services*
27 ~~are services~~” means activities designed to provide time-limited
28 foster care services to prevent or remedy neglect, abuse, or
29 exploitation, when the child cannot safely remain at home, and
30 needs temporary foster care, while services are provided to reunite
31 the family.

32 (i) As used in this chapter, ~~permanent~~ “*permanent placement*
33 ~~services are services~~” means activities designed to provide an
34 alternate permanent family structure for children who, because of
35 abuse, neglect, or exploitation, cannot safely remain at home and
36 who are unlikely to ever return home. These services shall be
37 provided on behalf of children for whom there has been a judicial
38 determination of a permanent plan for adoption, legal guardianship,
39 or long-term foster care.

1 (j) As used in this chapter, family “family preservation services
2 services” include those services specified in Section 16500.5 to
3 avoid or limit out-of-home placement of children, and may include
4 those services specified in that section to place children in the least
5 restrictive environment possible.

6 (k) (1) (A) ~~In any county electing to implement this~~
7 ~~subdivision, all~~ *An applicant applying for, or an employee*
8 *transferring to, a position with the county welfare department*
9 *employees who will have frequent and routine contact with children*
10 *shall, by February 1, 1997, and all welfare department employees*
11 *who are expected to have frequent and routine contact with children*
12 *and who are hired on or after January 1, 1996, and all such*
13 *employees whose duties change after January 1, 1996, to include*
14 *frequent and routine contact with children, shall, if the employees*
15 *prospective employee will provide services to children who are*
16 *alleged victims of abuse, neglect, or exploitation, exploitation, he*
17 *or she shall sign a declaration under penalty of perjury regarding*
18 *any prior criminal conviction; and shall provide a set of fingerprints*
19 *to the county welfare director.*

20 (B) The county welfare director shall secure from the
21 Department of Justice a criminal record to determine whether the
22 *prospective employee specified in subparagraph (A) has ever been*
23 *convicted of a crime, whether state or federal, other than a minor*
24 *traffic violation. The Department of Justice shall deliver the*
25 *criminal record to the county welfare director provide a state and*
26 *federal level response to the county pursuant to subdivision (p) of*
27 *Section 11105 of the Penal Code. The county shall request from*
28 *the Department of Justice subsequent arrest notification service,*
29 *as provided pursuant to Section 11105.2 of the Penal Code, for*
30 *persons described in subparagraph (A) that are hired by the county*
31 *for a position that includes frequent and routine contact with*
32 *children.*

33 (C) If it is found that ~~the~~ *a person to whom subparagraph (A)*
34 *applies* employee has been convicted of a crime, other than a minor
35 traffic violation, the county welfare director shall determine
36 whether there is substantial and convincing evidence to support a
37 reasonable belief that the ~~employee~~ *person* is of good character so
38 as to justify frequent and routine contact with children. *If this*
39 *finding is not made, the county is prohibited from hiring that*
40 *person.*

1 (D) ~~No exemption shall be granted pursuant to subparagraph~~
2 ~~(C) The county is prohibited from hiring a person to whom~~
3 ~~subparagraph (A) applies if the person has been convicted of a~~
4 ~~sex offense against a minor, or has been convicted of an offense~~
5 ~~specified in Section 220, 243.4, 264.1, 273d, 288, or 289 245,~~
6 ~~273.5, or 290 of the Penal Code, or in paragraph (1) of Section~~
7 ~~273a of, or subdivision (a) or (b) of Section 368 of, the Penal Code,~~
8 ~~or has been convicted of an offense specified in subdivision (c) of~~
9 ~~Section 667.5 of the Penal Code a conviction for child abuse~~
10 ~~pursuant to Section 273a, 273ab, or 273d of the Penal Code, or~~
11 ~~any sex offense specified as being perpetrated against a minor.~~
12 ~~The county welfare director shall suspend such a person from any~~
13 ~~duties involving frequent and routine contact with children.~~

14 (E) Notwithstanding subparagraph (D), the county welfare
15 director may grant an exemption if the ~~employee or prospective~~
16 ~~employee, who was convicted of a crime against an individual~~
17 ~~specified in paragraph (1) or (7) of subdivision (c) of Section 667.5~~
18 ~~of the Penal Code, has been rehabilitated as provided in Section~~
19 ~~4852.03 of the Penal Code and has maintained the conduct required~~
20 ~~in Section 4852.05 of the Penal Code for at least 10 years and has~~
21 ~~the recommendation of the district attorney representing the~~
22 ~~employee's or prospective employee's county of residence, or if~~
23 ~~the employee or prospective employee specified in subparagraph~~
24 ~~(D) has received a certificate of rehabilitation pursuant to Chapter~~
25 ~~3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the~~
26 ~~Penal Code. In that case, the county welfare director may give the~~
27 ~~employee or prospective employee an opportunity to explain the~~
28 ~~conviction and shall consider that explanation in the evaluation of~~
29 ~~the criminal conviction record required pursuant to subparagraph~~
30 ~~(C).~~

31 (F) If no criminal record information has been recorded, the
32 county welfare director shall cause a statement of that fact to be
33 included in that person's personnel file.

34 (2) For purposes of this subdivision, a conviction means a plea
35 or verdict of guilty or a conviction following a plea of nolo
36 contendere. ~~Any~~ *An action which that* the county welfare director
37 is permitted to take following the establishment of a conviction
38 may be taken when the time for appeal has elapsed, ~~or the judgment~~
39 ~~of conviction has been affirmed on appeal, or when an order~~
40 ~~granting probation is made suspending the imposition of sentence,~~

1 notwithstanding a subsequent order pursuant to Sections 1203.4
2 and 1203.4a of the Penal Code permitting the person to withdraw
3 his or her plea of guilty and to enter a plea of not guilty, or setting
4 aside the verdict of guilty, or dismissing the accusation,
5 information, or indictment. For purposes of this subdivision, the
6 record of a conviction, or a copy thereof certified by the clerk of
7 the court or by a judge of the court in which the conviction
8 occurred, shall be conclusive evidence of the conviction.

9 (3) *The county may require a person to whom subparagraph
10 (A) of paragraph (1) applies to pay any fees charged by the
11 Department of Justice and an additional fee in an amount that
12 shall not exceed the costs to the county of administering this
13 subdivision.*

14 (4) *A person to whom subparagraph (A) of paragraph (1)
15 applies who is denied a position pursuant to paragraph (1) shall
16 receive a copy of the criminal record upon written request.*

17 (5) *A county may require a current employee who has frequent
18 and routine contact with children, if the employee provides services
19 to children who are alleged victims of abuse, neglect, or
20 exploitation, to provide fingerprints for the purpose of obtaining
21 a criminal record from the Department of Justice. If the criminal
22 record returns a conviction for a crime, other than a minor traffic
23 violation, the county welfare director shall make the determination
24 required in subparagraph (C) of paragraph (1) to determine the
25 employee's employment and job assignment status. If the criminal
26 record returns a conviction for any of the offenses listed in
27 subparagraph (D) of paragraph (1), the employee shall, subject
28 to subparagraph (E) of paragraph (1), either be terminated or
29 suspended from any duties involving frequent and routine contact
30 with children.*

31 ~~SECTION 1. Chapter 3.5 (commencing with Section 16250)~~
32 ~~is added to Part 4 of Division 9 of the Welfare and Institutions~~
33 ~~Code, to read:~~

34
35 ~~CHAPTER 3.5. CHILD WELFARE EMPLOYEES~~
36

37 ~~16250. (a) Commencing January 1, 2010, before hiring a~~
38 ~~person for a position as a county child protective service social~~
39 ~~worker who will be assigned emergency response, family~~
40 ~~maintenance, family reunification, permanent placement, or~~

1 adoption responsibilities, the county shall secure from the
2 Department of Justice a criminal history to determine if the
3 applicant has ever been convicted of a crime specified in Section
4 245, 273.5, or 290 of the Penal Code, a conviction for child abuse
5 pursuant to Section 273a, 273ab, or 273d of the Penal Code, or
6 any sex offense specified as being perpetrated against a minor.

7 (b) The county may require the applicant to pay any fees charged
8 by the Department of Justice for the processing of the criminal
9 history.

10 (c) A county shall submit to the Department of Justice
11 fingerprint images and related information required by the
12 Department of Justice of all child protective service social workers,
13 as defined by subdivision (a), for the purposes of obtaining
14 information regarding the existence and content of a record of state
15 or federal convictions and state or federal arrests and also
16 information regarding the existence and content of a record of state
17 or federal arrests for which the Department of Justice establishes
18 that the person is free on bail or on his or her own recognizance
19 pending trial or appeal.

20 (d) When received, the Department of Justice shall forward to
21 the Federal Bureau of Investigation requests for federal summary
22 criminal history information received pursuant to this section. The
23 Department of Justice shall review the information returned from
24 the Federal Bureau of Investigation and compile and disseminate
25 a response to the county.

26 (e) The Department of Justice shall provide a state and federal
27 level response to the county pursuant to subdivision (p) of Section
28 11105 of the Penal Code.

29 (f) The county shall request from the Department of Justice
30 subsequent arrest notification service, as provided pursuant to
31 Section 11105.2 of the Penal Code, for persons described in
32 subdivision (e).

33 (g) The Department of Justice shall charge a fee sufficient to
34 cover the cost of processing the request described in this section.

35 16251. (a) If the county finds, through the criminal history
36 required by Section 16250, that the applicant has been convicted
37 of a crime specified in subdivision (a) of Section 16250, the
38 applicant shall not be hired.

39 (b) If the county finds that the applicant is awaiting trial for a
40 crime specified in subdivision (a) of Section 16250, the county

1 may cease processing the application until the conclusion of the
2 trial.

3 (e) If the county determines, after hiring an applicant, that the
4 person has been convicted of a crime specified in subdivision (a)
5 of Section 16250, the county shall terminate the employee.

6 ~~16252. (a) For purposes of this chapter, "conviction" means~~
7 ~~a plea or verdict of guilty or a conviction following a plea of nolo~~
8 ~~contendere in any court in this or another state. A conviction has~~
9 ~~occurred when the time for appeal has elapsed, when the judgment~~
10 ~~of conviction has been affirmed on appeal, or when an order~~
11 ~~granting probation is made suspending the imposition of sentence,~~
12 ~~notwithstanding a subsequent order pursuant to Sections 1203.4~~
13 ~~and 1203.4a of the Penal Code permitting the person to withdraw~~
14 ~~his or her plea of guilty and to enter a plea of not guilty, or setting~~
15 ~~aside the verdict of guilty, or dismissing the accusation,~~
16 ~~information, or indictment.~~

17 (b) ~~An individual who has obtained a certificate of rehabilitation~~
18 ~~shall not be considered convicted for purposes of this chapter.~~

19 ~~16253. An applicant who is denied a position pursuant to~~
20 ~~Section 16251 shall receive a copy of the criminal history report~~
21 ~~upon written request.~~

22 SEC. 2. No reimbursement is required by this act pursuant to
23 Section 6 of Article XIII B of the California Constitution because
24 a local agency or school district has the authority to levy service
25 charges, fees, or assessments sufficient to pay for the program or
26 level of service mandated by this act, within the meaning of Section
27 17556 of the Government Code.